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June 30, 1983

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Re: U.S.A. v. Reilly Tar & Chemical Corp.
Civil No. 4-80-469

Dear Counsel:

Enclosed and served upon you by United States mail
please find copies of the following amended answers, approved
by the recent Order of Magistrate Boline:

Amended Answer of Reilly Tar & Chemical
Corporation to the Amended Complaint of
United States of America

Amended Answer of Reilly Tar & Chemical
Corporation to Amended Complaint in
Intervention of the State of Minnesota

DORSEY & WHITNEY

Page Two

June 30, 1983

Second Amended Answer of Reilly Tar &
Chemical Corporation to Amended Complaint
in Intervention of the City of St. Louis
Park

Amended Answer of Reilly Tar & Chemical
Corporation to Amended Complaint in
Intervention of the City of Hopkins

Also enclosed and served please find a copy of the
following:

Answer of Reilly Tar & Chemical Corpo-
ration to the Cross-Claim of Philip's
Investment Co.

Although our files do not reflect ever receiving service of
this Cross-Claim, by agreement of counsel we are providing
the above Answer. Inasmuch as this Answer refers to Reilly's
Answers to the Complaints of other parties, it was necessary
to wait for Magistrate Boline's ruling concerning the amend-
ments to those Answers before serving this one.

Yours very truly,


Edward J. Schwartzbauer

EJS:ml
Enclosures

cc: All Counsel of Record

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

STATE OF MINNESOTA, by its
Attorney General Warren Spannaus,
its Department of Health, and its
Pollution Control Agency,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION;
HOUSING AND REDEVELOPMENT AUTHORITY
OF ST. LOUIS PARK; OAK PARK VILLAGE
ASSOCIATES; RUSTIC OAKS CONDOMINIUM,
INC.; and PHILLIP'S INVESTMENT CO.,

Defendants,

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant,

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

Civil No. 4-80-469

SECOND AMENDED ANSWER OF
REILLY TAR & CHEMICAL
CORPORATION TO AMENDED
COMPLAINT IN INTERVENTION
OF THE CITY OF ST. LOUIS
PARK

Reilly Tar & Chemical Corporation (hereinafter "Reilly")
for its answer to the amended complaint in intervention herein,
states and alleges as follows:

1. Admits paragraph 1.
2. Admits paragraph 2.
3. Admits that this Court has jurisdiction under the provisions of 42 U.S.C. § 9613, if that section may constitutionally be applied in this case, but denies that this Court has jurisdiction over this case under the other provisions of law referred to or under any other provision of law.
4. Admits paragraph 4.
5. Admits paragraph 5.
6. Admits that in the course of its business Reilly brought upon its land and stored coal tar, the products of coal tar distillation, including creosote and coal tar wastes, but denies that these substances are not naturally present in the land.
7. Admits that Reilly discharged small quantities of coal tar products and distillation wastes onto its land, but denies the remaining allegations in paragraph 7.
8. Denies knowledge sufficient to form a belief with respect to the allegations in paragraph 8.
9. Denies paragraph 9.
10. Admits paragraph 10.
11. Denies paragraph 11.
12. Denies paragraph 12.
13. Denies paragraph 13.
14. Admits that on or about October 2, 1970 the State of Minnesota and the City served a complaint in the District

Court of the State of Minnesota against Reilly, but denies that the original complaint raised claims of surface and air pollution separate and distinct from the claims of underground water contamination asserted in this case, and denies that at that time there was no known damage to underground waters. Reilly specifically alleges that at the time of the commencement of that action, both the City and the Pollution Control Agency made extensive investigations of alleged groundwater pollution and were fully aware, as evidenced by City and State reports that there was evidence of groundwater contamination.

15. Admits that on February 23, 1971 Reilly announced that it would close its operations in St. Louis Park effective September, 1971, but alleges that the decision was made after a series of unsuccessful attempts by St. Louis Park to force Reilly to sell its property, and after efforts had been made by St. Louis Park to obtain Reilly's property through the exercise of the power of eminent domain.

16. Denies paragraph 16.

17. Denies paragraph 17.

18. Denies paragraph 18.

19. Denies knowledge sufficient to form a belief with respect to the allegations in paragraph 19.

20. Denies knowledge sufficient to form a belief with respect to the allegations in paragraph 20.

21. Admits paragraph 21.

22. Neither admits nor denies paragraph 22, but alleges that the complaints in intervention speak for themselves.

23. Denies knowledge sufficient to form a belief with respect to the allegations in paragraph 23.

24. Admits that on or about May 11, 1981, the City sent a letter to Reilly and that on or about May 27, 1981, Reilly sent a letter to the City, and alleges that both letters speak for themselves.

25. Denies paragraph 25.

26. Denies paragraph 26.

27. Denies paragraph 27.

28. Denies paragraph 28.

29. Denies paragraph 29.

30. Denies paragraph 30.

31. Denies paragraph 31.

32. Denies paragraph 32.

33. Denies paragraph 33.

34. Admits paragraph 34.

35. Admits paragraph 35.

36. Admits paragraph 36.

37. Admits that the City makes the claims set forth in paragraph 37, but denies that these claims have any validity.

38. Except as otherwise herein expressly admitted, denies each and every allegation contained in the Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

39. The claims for relief are barred by the doctrine of laches. The claims set forth in paragraphs 27-33 of the amended complaint, containing allegations with respect to the Minnesota Environmental Rights Act, strict liability, public nuisance, negligence, strict liability for abnormally dangerous activities, and vested property rights in ground waters, are barred by the statute of limitations.

SECOND AFFIRMATIVE DEFENSE

40. The complaints giving rise to this action were settled by agreement between the State of Minnesota, the City of St. Louis Park and this defendant by virtue of an Agreement for Purchase of Real Estate executed by the City and this defendant April 14, 1972. The State of Minnesota accepted that settlement at that time and subsequent thereto. Said Agreement is attached hereto as Exhibit A and made a part hereof.

THIRD AFFIRMATIVE DEFENSE

41. The complaints giving rise to this action are not the responsibility of this defendant because of a hold harmless agreement entered into between this defendant and the City of St. Louis Park on June 19, 1973, which provides, in part, that the City will hold this defendant harmless from any and all claims which may be asserted against it by the State of Minnesota and will be fully responsible for restoring the property, at its expense, to any condition that may be required by the Minnesota Pollution Control Agency. A copy of said agreement is attached as Exhibit B and is made a part hereof.

FOURTH AFFIRMATIVE DEFENSE

42. The liability of the City of St. Louis Park and the non-liability of this defendant to remedy the alleged groundwater contamination problems alleged in the complaint has been fully adjudicated by the Minnesota Pollution Control Agency on behalf of the United States Environmental Protection Agency in an adjudicative administrative proceeding entitled, "In the Matter of the Application of the City of St. Louis Park for a National Pollutant Discharge Elimination System Permit," file no. MN 0045489.

FIFTH AFFIRMATIVE DEFENSE

43. Alleges that the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and the Resource Conservation and Recovery Act of 1976, as amended, upon which the plaintiff relies in its First and Second Claims, violate the Fifth Amendment of the United States Constitution in that application of either or both statutes to the facts of this case would deprive the defendant, Reilly, of its property without due process of law.

SIXTH AFFIRMATIVE DEFENSE

44. Alleges that the complaint herein fails to state a claim upon which relief may be granted.

COUNTER-CLAIM

Defendant, Reilly Tar & Chemical Corporation, for

its Counter-Claim against Plaintiff-Intervenor, the City of St. Louis Park ("The City"), alleges as follows:

1. Reilly realleges paragraph 41 of its answer herein and alleges that on September 20, 1982, it tendered to the City the defense of this action and requested that the City hold Reilly harmless from any and all costs in connection with this action. The City failed to respond to that request. Under the hold harmless agreement, the City is liable to Reilly with respect to any and all claims asserted herein by the Plaintiff State of Minnesota.

2. For many years prior to 1972, the City either negligently or intentionally, and in an unreasonable manner, diverted the flow of surface waters which fell or drained onto the streets of the City so as to cause them to flood the Reilly property, which in turn caused ditches and basins to overflow and wastes to be carried to the property to the south of Reilly's plant.

3. Since 1972, the former Reilly property has been in the control of the City. On information and belief, the City has caused roads and sewers to be constructed in the immediate vicinity of the Reilly deep well at times when the well was left open and unprotected, resulting in any alleged contamination of the drinking water aquifers.

4. To the extent that the City is responsible for causing or contributing to the claims of soil or ground-

water pollution asserted herein, the City is liable to contribute to any judgment which may be entered against Reilly with respect to the claims of the Plaintiffs.

WHEREFORE, Reilly Tar & Chemical Corporation prays as follows:

1. That this Court enter judgment in its favor granting no relief to Plaintiff-Intervenor, City of St. Louis Park.

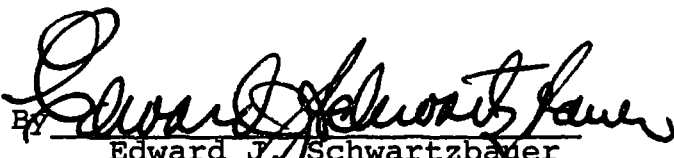
2. In the event that this defendant is held liable with respect to the claims of Plaintiffs, judgment in favor of Reilly Tar & Chemical Corporation against the City of St. Louis Park for all sums which may be adjudged in favor of such Plaintiffs, plus Reilly's attorneys' fees and costs.

3. Judgment in favor of Reilly Tar & Chemical Corporation for its costs and disbursements herein.

4. Such other relief as this Court deems just and appropriate.

Dated: June 29, 1983

DORSEY & WHITNEY

By 

Edward J. Schwartzbader
Becky Comstock
Michael J. Wahoske
2200 First Bank Place East
Minneapolis, Minnesota 55402
Telephone: (612) 340-2825/2987/8755

Attorneys for Defendant
Reilly Tar & Chemical Corporation

AGREEMENT FOR
PURCHASE OF REAL ESTATE

07-14-72

THIS AGREEMENT, made this 14 day of April, 1972,
by and between Reilly Tar and Chemical Corporation (hereafter
"Seller") and the City of St. Louis Park (hereafter "Buyer").

Seller agrees to sell and Buyer agrees to purchase
the following described property located in the City of St. Louis
Park, Hennepin County, Minnesota, legally described as:

Lots 25 through 48, inclusive, Block 306,
Rearrangement of St. Louis Park

Lot 1, Auditor's Subdivision No. 281

upon the following terms and conditions:

1. Purchase Price; Earnest Money. The purchase price
to be paid by Buyer for the subject property shall be One Million
Nine Hundred Thousand Dollars (\$1,900,000.00). Buyer has paid
Seller \$3,000.00 earnest money, the receipt of which is hereby
acknowledged. The balance of \$1,895,000.00 shall be paid by
Buyer to Seller at closing.

2. Closing. Closing shall be October 2, 1972, at the
offices of Yngve, Yngve & Reiersgard, Attorneys, 6250 Wayzata
Boulevard, Minneapolis, Minnesota.

3. Possession Date. Possession shall be turned over to
Buyer as of the date of closing.

4. Condition of Premises. It is understood that as a
part of the consideration of this purchase that the Buyer is
acquiring said premises in an "as is" condition except for the
provisions in number 5 of this agreement and that this "as is"
condition includes any and all questions of soil and water im-
purities and soil conditions; and that the City agrees to make
no claim against the Seller for damages relative to soil and
water impurities, if any, in any way relating to the premises sold

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here, or relative to any other premises in which the City of St. Louis Part holds an interest. This provision shall survive the closing of this transaction.

5. Demolition, Removal, and Clean-up Work.

a) Definitions. For purposes of this section, the following definitions shall be applicable:

i) Grade (adjacent ground elevation) is the lowest point of elevation of the finished surface of the ground between the exterior wall of the building and a point five feet distant from said wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and the property line of it if it is less than five feet distant from said wall. In case walls are within five feet of a public way, the grade shall be the elevation of the public way.

ii) Small masonry shall mean brick, stone, concrete, and non-organic materials 1 1/2 cubic feet or less in content and not more than 24" in any dimension and shall not be capable of compression at less than 1500 pounds per square foot that may easily be ascertained as to density by astute judgment factors of both the demolition contractor and the purchaser's engineering personnel.

b) Work to be Done. Reilly Tar and Chemical Company shall provide for demolition, removal, and clean-up work on the property as follows:

1) Demolish all buildings, structures, and attachments thereto to surrounding grade. Foundations and floors are to be removed to grade or below.

2) Remove above and below grade tanks and demolish supporting pads or legs to grade or below grade.

3) Remove all railroad railings and ties together with associated docks or other structures to surrounding grade or below. Loading dock and tar well structures are to be removed to the piling level, other pile caps, if any not included.

4) Remove above grade piping, poles, walls and miscellaneous structures.

5) Break open tunnels, pits, basements, and cellars to the extent they are known to the seller and remove the below-grade piping or machinery exposed in the work.

6) Fill basements, cellars, pits, tunnels, and low areas with small masonry and earth materials from the site.

7) Dispose off the site the demolition materials and debris not suitable for fill outside of St. Louis Park.

8) Remove container and piping residues and dispose of same at an off site location outside of St. Louis Park.

9) Generally level the site to grade and remove miscellaneous timber, large iron, steel, and remaining debris from site and dispose of at a location outside of St. Louis Park.

10) The site shall be free of all visible demolition materials not suitable for fill, buildings, structures, and attachments thereto remaining above grade. Site finishing shall be accomplished in a workmanlike manner to rough grade conditions.

This work shall be completed by the seller on or before the closing date of October 2, 1972.

All species of trees on the premises shall be protected from damage during the removal of structures and equipment.

This paragraph shall not be applicable to that part of the described property lying Easterly of the Easterly right-of-way line of the proposed Louisiana Avenue extension, which right-of-way line is shown in red on Exhibit A hereto. As to the part of the property lying East of the Easterly right-of-way, Buyer hereby accepts it in an "as is" condition, and Buyer shall be responsible for all demolition, removal, and clean-up work thereon.

6. Real Estate Taxes; Special Assessments. It is also agreed that at or prior to closing the Seller will pay real estate taxes due and payable in 1972 and all special assessments against the subject premises which have been levied prior to January 1, 1972, including the assessment for storm sewer, for which an appeal is now pending, Hennepin County District Court File No. 678532 and will then dismiss said appeal.

7. Seller's Warranty of Title. Subject to performance by the Buyer the Seller agrees to execute and deliver a Warranty Deed conveying marketable title to said premises subject only to the following exceptions:

- a) Building and zoning laws, ordinances, State and Federal regulations;
- b) Restrictions relating to use or improvement of premises without effective forfeiture provision;
- c) Reservation of any minerals or mineral rights to the State of Minnesota;
- d) Utility and drainage easements which do not interfere with present improvements.

8. Delivery of Abstract of Title; Marketability of Title:
The Seller shall, within a reasonable time after approval of this

agreement, enish an abstract of title, or Registered Property Abstract certified to date to include proper searches covering bankruptcies, and State and Federal judgments and liens. The Buyer shall be allowed 30 days after receipt thereof for examination of said title and the making of any objections thereto, said objections to be made in writing or deemed to be waived. If any objections are so made the Seller shall be allowed 180 days to make such title marketable. Pending correction of title, the payments hereunder required shall be postponed, but upon correction of title and within 10 days after written notice to the Buyer, or upon closing date, whichever date is later, the parties shall perform this agreement according to its terms. If said title is not marketable and is not made so within 180 days from the date of written objections thereto as above provided, this agreement shall, at Buyer's option, be null and void.

9. Current Litigation. It is understood that this agreement represents a means of settling the issues involved in State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs, vs. Reilly Tar & Chemical Corporation, Defendant, Hennepin County Minnesota District Court Civil File No. 670767. It is understood that the City of St. Louis Park will deliver dismissals with prejudice and without cost to defendant executed by itself and by the plaintiff State of Minnesota at closing. Defendant Reilly Tar & Chemical Corporation will deliver a dismissal of its counterclaim with prejudice and without cost to plaintiffs.

10. Equipment to Remain on Premises. Seller agrees to identify all wells and leave them intact. The Seller may, at its option, remove the pumping equipment. Seller agrees to leave water main intact and in an operable condition.

11. Continued Use of Premises. Between the date of the purchase agreement and the date of closing, the company may use

the premises ~~is~~ manufacturing the industrial purposes and shall continue all existing pollution abatement procedures that are now in place and installed. The company shall cease all business operation not later than October 1, 1972.

12. Maps, Drawings and Information Concerning the Property.

Upon acceptance of this offer to purchase, Seller shall furnish Buyer with copies of all maps, drawings, and other data and information it may possess concerning the subject property.

13. Damages for Delay of Closing. In the event this

sale is not closed on or before December 15, 1972, and in the event the purchaser, and any assignee of the purchaser, has not abandoned any right, title and interest in the premises by that date, then as additional damages, the purchaser agrees to pay the Seller an amount equal to the real estate taxes and assessments due and payable on the premises, which are payable in the year 1973, and said payment shall be due by May 1, 1973, and this provision for payment of damages, shall be deemed a payment of part of the earnest money and shall survive any cancellation of the purchase agreement.

14. Assignment of Seller's Rights. It is agreed and

understood that the City of St. Louis Park is executing this agreement on behalf of the Housing and Redevelopment Authority of St. Louis Park. The City of St. Louis Park may assign its rights hereunder to the Housing and Redevelopment Authority of St. Louis Park, or to any other party without the consent of Seller. Any such assignment shall not relieve the City of its obligations hereunder.

REILLY TAYLOR CHEMICAL CORPORATION

By

Its

President

And

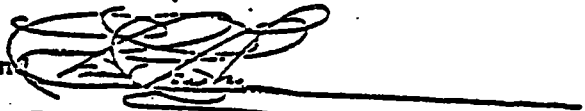
Its

Vice President

460-684

CITY OF ST. LOUIS PARK

By 
Its Mayor

And 
Its City Manager

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TOR'S
DIVISION

TOR'S
SUBDIVISION

Exhibit A

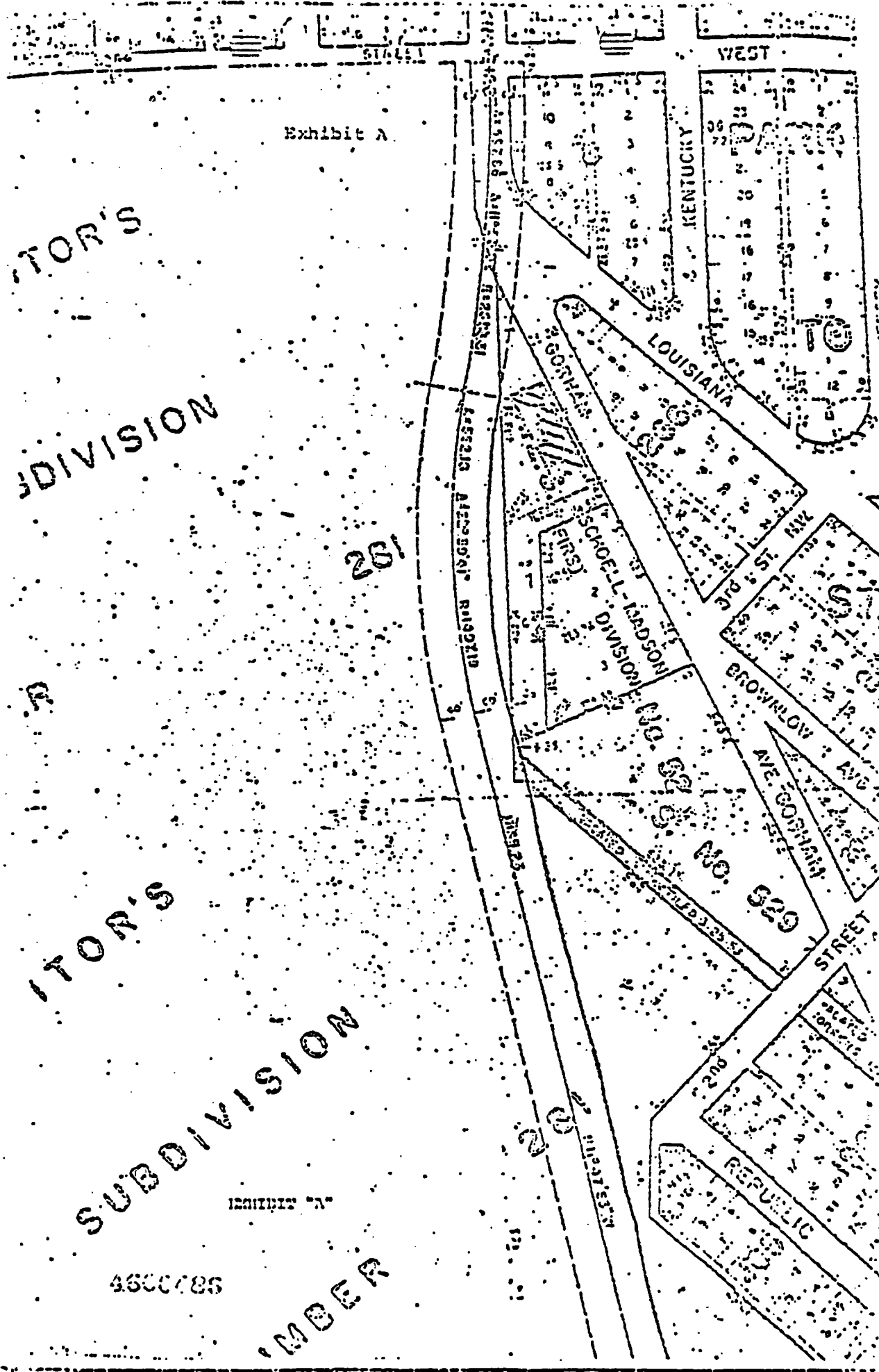
LEGEND "A"

4600085

MEMBER

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HOLD HARMLESS AGREEMENT

THIS AGREEMENT, entered into this 19th day of June, 1973 by and between the City of St. Louis Park and Reilly Tar and Chemical Corporation.

Whereas, on April 14, 1972 the City of St. Louis Park (hereafter "City") and Reilly Tar and Chemical Corporation (hereafter "Reilly") entered into an Agreement in which the City agreed to acquire Reilly's property in St. Louis Park;

Whereas, the acquisition of this property by the City was intended as a means of settlement of the issues involved in the State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs vs. Reilly Tar and Chemical Corporation, Defendant, Hennepin County District Court Civil File No. 670767.

Whereas, the City agreed in the Agreement of April 14, 1972 that it would deliver dismissals of the above noted action with prejudice and without cost to defendant executed by itself and by the plaintiff State of Minnesota at closing;

Whereas, the Plaintiff State of Minnesota has refused at this time to deliver a dismissal of its complaint;

Whereas, the City, and Reilly desire to close the real estate sale and purchase in the manner contemplated in the Agreement of April 14, 1972;

Therefore, it is agreed

1. Dismissal of Action by City

The City will dismiss the action, insofar as and remedy is claimed by the City with prejudice and without cost to Reilly.

2. Dismissal of Counterclaim by Reilly

Reilly will dismiss its counterclaim against the City with prejudice and without cost to the City.

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3. City to Hold Reilly Harmless

The City hereby agrees to hold Reilly harmless from any and all claims which may be asserted against it by the State of Minnesota, acting by and through the Minnesota Pollution Control Agency, and will be fully responsible for restoring the property, at its expense, to any condition that may be required by the Minnesota Pollution Control Agency.

4. Hold Harmless Agreement Supplementary

The Hold Harmless Agreement in Number 3 hereof is intended to be supplementary to the Agreement between the City and Reilly relative to Carl Balander & Sons, and to Paragraph 4 of the Agreement of April 14, 1972 between the City and Reilly for the purchase of real estate.

5. City and Reilly to Proceed to Closing

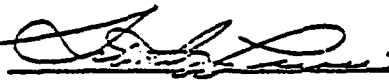

Reilly and the City will proceed to the closing of the real estate transaction contemplated by the Agreement between the parties of April 14, 1972, as amended by the Contract for Deed of October 12, 1972.

Reilly Tar and Chemical Corporation

By 
Its VP President

And _____
Its _____

City of St. Louis Park

By 
Its Mayor
And 
Its City Manager